IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19031 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)
Versus
JAIMALSING KESARJI BHATTI - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 01/05/2007

ORAL JUDGMENT

1. The Gujarat State Road Transport Corporation has invoked Articles 226 and 227 of the Constitution to challenge the order dated 29.3.2006 of the

Appellate Authority under the Payment of Gratuity Act, 1972 in Appeal No 41 of 2005; whereby the order dated 16.3.2005 of the Controlling Authority under the same Act to pay to the petitioner Rs. 1,89,720/- by way of gratuity with interest @ 10% was confirmed.

2. It is the case of the petitioner that the service of the respondent was terminated for an act which constituted offences of forgery and misappropriation involving moral turpitude and such acts having been committed in the course of employment, the petitioner was entitled to forfeit the gratuity payable to the respondent. Learned counsel Mr Rawal submitted that due procedure for making an order of forfeiture was not made on account of some confusion, the circular dated 19.7.1991 of the petitioner and pendency of the civil suit filed by the respondent to challenge his dismissal from service. He harped upon the fact that there was no dispute about dismissal of the respondent on account of the misconducts which were proved at the departmental enquiry and the misconducts amounted to offences involving moral turpitude. However,

concededly, the petitioner acted on the basis of the unamended provisions of clause (b) of sub-section (6) of section 4 of the Payment of Gratuity Act, 1972.

3. Learned counsel Mr K.M. Paul, appearing for the respondent, submitted that no procedure whatsoever was followed and even no formal order for forfeiture of the whole amount of gratuity was made by the petitioner. He submitted that, by virtue of the amendment of the aforesaid provisions with effect from 1.7.1984, the employer is allowed the discretion to forfeit the amount of gratuity, wholly or partially and that discretion has to be exercised after giving an opportunity of being heard to the affected person and after applying a judicious mind to the facts of the case. He further submitted that the petitioner could and in fact did apply different yardsticks in the matter of forfeiture of gratuity and, therefore, exercise of discretion may be arbitrary in absence of any fixed guidelines in that regard. He, however, fairly conceded that, in the peculiar facts of the case where the civil suit of

the respondent challenging his dismissal had become practically infructuous, the respondent would be willing to forgo that part of the amount of gratuity which is equivalent to the loss caused to the petitioner. Therefore, the respondent would not have any objection, if the petitioner were to take a fresh decision after applying a judicious mind to the facts and representation that may be submitted by the respondent.

4. In view of the above facts and submissions, the petition is required to be partly allowed so as to quash the impugned orders with the direction to the petitioner to take a fresh decision in the matter of partial or full forfeiture of the entire amount of gratuity payable to the respondent, after affording to him an opportunity of being heard in the form of presenting a representation. The respondent shall submit his representation with all the relevant facts and material to the petitioner within a period of 15 days and appropriate authority of the petitioner Corporation shall decide upon the issue of forfeiture of the amount of gratuity, after

considering the representation and, if the gratuity is ordered to be partially forfeited, the remaining amount shall be paid to the respondent with interest @ 10% from 1.4.1999 till the date of payment, within a period of three months from today. In view of this arrangement based on the concessions of learned counsel, the amount deposited with the Controlling Authority by the petitioner to comply with the condition precedent to preferring the appeal in which the impugned order was made, shall be refunded to the petitioner. **Rule is made absolute** accordingly with no order as to costs.

sd/-
[D. H. Waghela, J.]

msp